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DEEPWATER PORT ACT AMENDMENTS OF 1984

AUGUST 9, 1982.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HOWARD, from the Committee on Public Works and Transportation, submitted the following

REPORT

[To accompany H.R. 2353 which on March 24, 1983, was referred jointly to the Committee on Merchant Marine and Fisheries and the Committee on Public Works and Transportation]

[Including cost estimate of the Congressional Budget Office]

The Committee on Public Works and Transportation, to whom was referred the bill (H.R. 2353) to amend the Deepwater Port Act of 1974, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Deepwater Port Act Amendments of 1984".

AMENDMENT, TRANSFER, OR RENEWAL OF LICENSE

SEC. 2. (a) Section 3(4) of the Deepwater Port Act of 1974 (33 U.S.C. 1502(4)) is amended to read:

"(4) 'application' means an application submitted under this Act for a license for the ownership, construction, and operation of a deepwater port;".

(b) Section 4(b) of the Deepwater Port Act of 1974 (33 U.S.C. 1503(b)) is amended to read:

"(b) The Secretary may—

"(1) on application, issue a license for the ownership, construction, and operation of a deepwater port; and

"(2) on petition of the licensee, amend, transfer, or reinstate a license issued under this Act.".

(c) Section 4(f) of the Deepwater Port Act of 1974 (33 U.S.C. 1503(f)) is amended to read:

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"(f) The Secretary may amend, transfer, or reinstate a license issued under this Act if the amendment, transfer, or reinstatement is consistent with the findings made at the time the license was issued.".

(d) Section 4(h) of the Deepwater Port Act of 1974 (33 U.S.C. 1503(h)) is amended to read:

"(h) A license issued under this Act remains in effect unless suspended or revoked by the Secretary or until surrendered by the licensee.".

(e) Section 4(e)(1) of the Deepwater Port Act of 1974 (33 U.S.C. 1503(e)(1)) is amended by inserting at the end thereof: "On petition of a licensee, the Secretary shall review any condition of a license issued under this Act to determine if that condition is uniform, insofar as practicable, with the conditions of other licenses issued under this Act, reasonable, and necessary to meet the objectives of this Act. The Secretary shall amend or rescind any condition that is no longer necessary or otherwise required by any Federal department or agency under this Act.".

(f) The first sentence of section 5(g) of the Deepwater Port Act of 1974 (33 U.S.C. 1504(g)) is amended by striking "issued, transferred, or renewed" and inserting "issued".

(g) The first sentence of section 7(a) of the Deepwater Port Act of 1974 (33 U.S.C. 1506(a)) is amended by striking "issue, transfer, or renew" and inserting "issue".

(h) Section 7(b)(1) of the Deepwater Port Act of 1974 (33 U.S.C. 1506(b)(1)) is amended:

(1) by striking the first sentence and inserting: "The Secretary shall transmit promptly to the Attorney General and the Federal Trade Commission a complete copy of each application for issuance of a license or a petition for the amendment, transfer, or reinstatement of a license that is received."; and

(2) in the second sentence, by inserting immediately after the word "hearing" the phrase "on license application".

ECONOMIC DEREGULATION

SEC. 3. (a) The text of section 8 of the Deepwater Port Act of 1974 (33 U.S.C. 1507) is amended to read:

"SEC. 8. (a) A deepwater port and a storage facility serviced directly by that deepwater port shall operate as a common carrier under applicable provisions of part I of the Interstate Commerce Act and subtitle IV of title 49, United States Code, except as provided by subsection (b) of this section.

"(b) A licensee under this Act shall accept, transport, or convey without discrimination all oil delivered to the deepwater port with respect to which its license is issued. However, a licensee is not subject to common carrier regulations under subsection (a) of this section when that licensee—

"(1) is subject to effective competition for the transportation of oil from alternative transportation systems; and

"(2) sets its rates, fee, charges and conditions of service on the basis of competition, giving consideration to other relevant business factors such as the market value of services provided, licensee's cost of operation, and the licensee's investment in the deepwater port and a storage facility, and components thereof, serviced directly by that deepwater port.

"(c) When the Secretary had reason to believe that a licensee is not in compliance with this section, the Secretary shall commence an appropriate proceeding before the Federal Energy Regulatory Commission or request the Attorney General to take appropriate steps to enforce compliance with this section and, when appropriate, to secure the imposition of appropriate sanctions. In addition, the Secretary may suspend or revoke the license of a licensee not complying with its obligations under this section.".

SUSPENSION OF FEE COLLECTION AND SUBROGATION

SEC. 4. Section 18 of the Deepwater Port Act of 1974 (33 U.S.C. 1517) is amended as follows:

(1) In the first sentence of subsection (d), following the words "deepwater port" the first time they appear, insert "while located in the safety zone".

(2) In subsection (f)(3), strike the third and fourth sentences and insert: "These collections shall cease after the date of enactment of the Deepwater Port Act Amendments of 1984, unless there are adjudicated claims against the Fund to be satisfied. The Secretary may order the collection of the fee to be resumed when the unobligated balance of the Fund as reduced by the unliquidated debts to the United States Treasury is less than $4,000,000. Any collection of fees ordered by the Secretary under the preceding sentence shall cease whenever the

unobligated balance of the Fund as reduced by the unliquidated debts to the United States Treasury exceeds $4,000,000. The Fund may borrow from the United States Treasury at an interest rate to be determined by the Secretary of the Treasury amounts sufficient to maintain the available balance in the Fund of $4,000,000, but only to such extent and in such amounts as are provided in advance in appropriation Acts. Such amounts shall remain available until expended.".

(3) In the fifth sentence of subsection (f)(3), after the word "than", insert "the amount the Secretary determines is needed to draw upon under subsection (c)(3) of this section or".

(4) In the seventh sentence of subsection (f)(3), after the word "needed", insert "to draw upon under subsection (c)(3) of this section or".

(5) In subsection (h)(2), insert at the end thereof: "In that event, the owner and operator of the vessel are jointly and severally liable for cleanup costs and damages resulting from that discharge in the same manner and to the same extent as under subsection (d) of this section.".

(6) In subsection (h)(3), insert at the end thereof: "When the Fund under this subsection is subrogated to the right of any person entitled to recovery against the owner or operator of a vessel, that owner and operator are jointly and severally liable for cleanup costs and damages resulting from that discharge in the same manner and to the same extent as under subsection (d) of this section.".

RELATIONSHIP TO OTHER LAWS

SEC. 5. (a) Section 19(a) of the Deepwater Port Act of 1974 (33 U.S.C. 1518(a)) is amended by adding at the end thereof:

"(3) The Secretary of State shall notify the government of each foreign state having vessels registered under its authority or flying its flag which may call at or otherwise utilize a deepwater port but which do not currently have an agreement in effect as provided in subsection (c)(2)(A)(i) of this section that the United States intends to exercise jurisdiction over vessels calling at or otherwise utilizing a deepwater port and the persons on board such vessels. The Secretary of State shall notify the government of each such state that, absent its objection, its vessels will be subject to the jurisdiction of the United States whenever they—

"(A) are calling at or otherwise utilizing a deepwater port; and

"(B) are within the safety zone of such a deepwater port and are engaged in activities connected, associated, or potentially interfering with the use and operation of the deepwater port.

The Secretary of State shall promptly inform licensees of deepwater ports of all objections received from governments of foreign states in response to notifications made under this paragraph.".

(b) Section 19(c) of the Deepwater Port Act of 1974 (33 U.S.C. 1518(c)) is amended to read:

"(c)(1) The jurisdiction of the United States shall apply to vessels of the United States and persons on board such vessels. The jurisdiction of the United States shall also apply to vessels, and persons on board such vessels, registered in or flying the flags of foreign states, whenever such vessels are—

"(A) calling at or otherwise utilizing a deepwater port; and

"(B) are within the safety zone of such a deepwater port, and are engaged in activities connected, associated, or potentially interfering with the use and operation of the deepwater port.

The jurisdiction of the United States under this paragraph shall not, however, apply to vessels registered in or flying the flag of any foreign state that has objected to the application of such jurisdiction.

"(2) Except in a situation involving force majeure, a licensee shall not permit a vessel registered in or flying the flag of a foreign state to call at or otherwise utilize a deepwater port licensed under this Act unless—

"(A)(i) the foreign state involved, by specific agreement with the United States, has agreed to recognize the jurisdiction of the United States over the vessels registered in or flying the flag of that state and persons on board such vessels in accordance with the provisions of paragraph (1) of this subsection, while the vessel is located within the safety zone, or

"(ii) the foreign state has not objected to the application of the jurisdiction of the United States to any vessel, or persons on board such vessel, while the vessel is located within the safety zone; and

"(B) the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal pro-

ceeding resulting from activities of the vessel or its personnel while located within such a safety zone.

"(3) For purposes of paragraph (2)(A)(ii) of this subsection, a licensee shall not be obliged to prohibit a call at or use of a deepwater port by a vessel registered in or flying the flag of an objecting state unless the licensee has been informed by the Secretary of State as required by subsection (a)(3) of this section.".

(c) The amendment made by subsection (b) of this section shall be effective on the ninetieth day following the date of enactment of this Act. The Secretary of State shall make the first series of notifications referred to in section 19(a)(3) of the Deepwater Port Act of 1974, as added by subsection (a) of this section, prior to the thirtieth day following the date of enactment of this Act.

INTRODUCTION

H.R. 2353 was referred jointly to the Committee on Public Works and Transportation and the Committee on Merchant Marine and Fisheries. The latter committee has reported the bill with amendments. The Deepwater Port Act of 1974 provides for Federal licensing and regulation of offshore ports designed to receive oil from vessels too large to enter conventional ports. It authorizes the Secretary of Transportation to license owners and operators and to issue regulations to control the location, construction, and operation of deepwater ports. It also establishes a Deepwater Port Liability Fund funded by a 2-cent per barrel fee to pay for cleanup costs in the event of oil spills.

H.R. 2353 makes a number of changes in the basic act. Briefly it:

Provides an expedited administrative procedure for the amendment, transfer, or removal of an outstanding deepwater port license;

Retains common carrier status for deepwater ports, but removes the requirement for rate regulation and tariff filing with the ICC;

Eliminates the Deepwater Port Liability Fund and makes the cleanup fund in section 311(k) of the Federal Water Pollution Control Act available for cleanup of spills at deepwater ports; and

Deletes the provision requiring a bilateral agreement with other countries if ships registered in those countries wish to use the deepwater port and substitutes the provision that a foreign vessel using a deepwater port is considered to have consented to the exercise of jurisdiction by the United States over the vessel.

When the Deepwater Port Act of 1974 was enacted into law, it was anticipated that increased imports utilizing very large cargo carriers would increase. This did not turn out to be the case. Because of reduced demand for crude oil imports and changing patterns of world crude oil movement, only one deepwater port facility, the Louisiana Offshore Oil Port (LOOP, Inc.), has been licensed by the Secretary of Transportation. This facility is operating at considerably less than its break-even volume of 700,000 barrels a day. The purpose of H.R. 2353 is to enable this facility to respond more quickly to changing market conditions and assist it and other such facilities which may be built in becoming more competitive.

EXPLANATION OF AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 2353

Briefly, the substitute would:

simplify existing procedures for amendment, transfer, and reinstatement of a deepwater port license;

extend the term of a deepwater port license from 20 years to an indefinite period covering the life of the facility;

provide for review of conditions of existing licenses;

relieve deepwater ports of economic regulation by the Federal Energy Regulatory Commission if appropriate competitive conditions exist;

suspend the current 2-cent-per-barrel fee imposed on oil delivered to a deepwater port;

provide for the pollution fund financed by the fees to be maintained at a $4 million level for ready response to pollution incidents;

provide for joint and several liability of a tanker's owner and operator if their negligence results in pollution at a deepwater port; and

create a new system for facilitating use of deepwater ports for foreign vessels.

The majority of the changes made in the substitute are of a drafting, technical, and clarifying nature. The substantive changes are as follows:

The substitute provides that a deepwater port facility shall be covered by applicable provisions of the Interstate Commerce Act unless the licensee is subject to effective competition and sets its rates and conditions of service on the basis of competition. These requirements are somewhat more strict than those in the introduced bill which deletes the reference to the Interstate Commerce Act and deems any rate set by the licensee to be just, reasonable, and nondiscriminatory.

The elimination of the Deepwater Port Liability Fund and the assumption of cleanup costs by section 311(k) of the Federal Water Pollution Control Act contained in the introduced bill are not in the substitute. Rather, the substitute retains the Deepwater Port Liability Fund but provides for the cessation of the collection of fees on crude oil unless the amount in the fund falls below $4 million. Borrowing authority is provided to ensure that the fund will be able to meet major emergencies.

The introduced bill removes the requirement in existing law that a bilateral agreement exist between the United States and the country in which a vessel calling at the port is registered providing for exercise of jurisdiction by the United States. The substitute provides a process whereby the Secretary of State notifies the governments of foreign states which do not have a bilateral agreement in effect that the United States intends to exercise jurisdiction over that country's vessels calling at a deepwater port. In the absence of objection from the other country, the vessels may call at a deepwater port facility and are subject to U.S. jurisdiction.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title of the legislation.

Section 2 establishes an informal administrative procedure, initiated at the petition of the licensee, to amend, transfer, or reinstate a deepwater port license, without resort to the formal application procedures under the act. The informal procedure requires that any amendment, transfer, or reinstatement of a license be consistent with the findings made at the time the license was issued. Section 2 also provides that a license, once issued, would remain in effect for the life of the facility, subject to suspension or revocation by the Secretary or surrender by the licensee. A licensee may also petition the Secretary to review for uniformity any condition imposed in connection with the license. License conditions should be reasonable, uniform (insofar as practicable) with the conditions of other licenses, and necessary to meet the objectives of the act. The Secretary is directed to amend or rescind any condition not meeting these standards. The Secretary is directed to furnish a copy of any petition for amendment, transfer, or reinstatement of a license to the Attorney General and the Federal Trade Commission for comment and review.

Section 3 reaffirms the obligation of the licensee of a deepwater port to operate as a common carrier under applicable provisions of the Interstate Commerce Act. However, this section lifts the requirements for tariff filing and regulation of a deepwater port licensee by the Federal Energy Regulatory Commission so long as two conditions are met. First, effective competition must exist for the transportation of oil by alternative transportation systems such as direct shipment, lightering, and transshipment. Second, the licensee must set its rates, fees, charges, and conditions of service competitively. If the Secretary has reason to believe that the two conditions are not being met by the licensee, the Secretary shall:

1. Request the Federal Energy Regulatory Commission to initiate an investigation to determine whether to reimpose tariff regulation;
2. Request the Attorney General to enforce the statutory common carrier obligations under this section; or
3. Suspend or revoke the license.

Section 4 clarifies the liability of a vessel's owner and operator for oil spills caused by a vessel bunkering or receiving oil within the safety zone. It restricts vessel liability to spills occurring while the vessel is in the zone.

The amendment also prevents a vessel owner or operator from employing the affirmative defense of limitation of liability in a subsequent subrogation action brought by the licensee or the Government against that vessel owner/operator, where the licensee or the Government has incurred liability for cleanup costs or damages and the incident was caused by the negligence or unseaworthiness of the vessel. In such cases, the owner and operator would be jointly and severally liable up to the limits set by the act.

In addition, the current 2-cent-per-barrel fee levied upon oil delivered at a deepwater port and deposited in the Deepwater Port Liability Fund is suspended on the date of enactment of the legislation. Fee collection is not to resume unless the fund balance falls below $4 milllion. Borrowing authority for the Secretary and other technical changes to the act are provided in this section so that the

level of the fund will be sufficient to permit prompt response to pollution incidents.

Section 5 eliminates the current requirement that foreign tankers be excluded from a deepwater port if their sponsoring country has not concluded a bilateral agreement with the United States agreeing to U.S. jurisdiction over its vessels. Under this section, a new system is established permitting a deepwater port to service foreign vessels even if its flag-country has not concluded such a bilateral agreement. The Secretary of State is to notify each flag-country which has not concluded such a bilateral agreement that, absent that country's objection, the United States intends to exercise jurisdiction over foreign vessels using U.S. deepwater port facilities. The notice is to state that this jurisdiction will apply to foreign vessels whenever they are calling at or otherwise using a deepwater port and are within the port's safety zone and are engaged in activitities connected, associated, or potentially interfering with the use and operation of the port. This section also requires the Secretary of State to advise deepwater port licensees of all objections to U.S. jurisdiction by foreign governments.

The jurisdiction described in the notice to foreign governments applies to vessels whose flag-nations have not objected to U.S. jurisdiction. It further requires each deepwater port licensee to include vessels whose sponsoring countries have filed such a jurisdictional objection in instances where the State Department has so informed that licensee.

Compliance With Clause 2(l) of Rule XI of the Rules of the House of Representatives.

(1) With reference to clause 2(l)(3)(A) of the Rules of the House of Representatives, no separate hearings were held on the subject matter of this legislation by the Subcommittee on Investigations and Oversight. However, the Subcommittee on Water Resources held hearings on this subject matter.

(2) With respect to clause 2(l)(3)(B) of rule IX of the Rules of the House of Representatives, H.R. 2353, as reported, does not provide new budget authority or increased tax expenditures. Accordingly, a statement pursuant to Section 380(a) of the Congressional Budget Act is not required.

(3) With reference to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee has received a report prepared by the Congressional Budget Office under Section 403 of the Congressional Budget Act. The report is as follows:

U.S. Congress,
Congressional Budget Office,
Washington, DC, August 9, 1984.

Hon. James J. Howard,
Chairman, Committee on Public Works and Transportation, House of Representatives, Rayburn House Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 2353, the Deepwater Port Act Amendments of 1984, as ordered reported by the House Committee on Public Works and

Transportation, August 8, 1984. We expect that enactment of this bill will result in a revenue loss of about $2 million per year to the federal government.

The bill would amend provisions of the Deepwater Port Act of 1974 regarding the economic regulation of deepwater ports, U.S. jurisdiction over vessels using deepwater ports, and the amendment, transfer, or renewal of licenses for owning, constructing, and operating a deepwater port. The bill would also terminate the 2 cents per barrel fee for oil loaded and unloaded at deepwater ports and would reduce the targeted balance in the Deepwater Port Liability Fund (DPLF) from $100 million to $4 million.

Under current law, fee collection terminates when the DPLF level reaches $100 million and begins again when the fund level falls below $100 million. H.R. 2353 would change the trigger level for fee collection from $100 million to $4 million. Current law also provides the DPLF with authority to borrow from the U.S. Treasury amounts necessary to pay claims against the fund if the fund balance is insufficient. H.R. 2353 would authorize the DPLF to borrow from the U.S. Treasury amounts sufficient to maintain the fund balance at $4 million, subject to appropriations acts. This additional borrowing authority will have no net budget effect.

The fund's current balance is approximately $6.8 million. There were no obligations from the DPLF in 1983, and there have been no claims made against the fund to date. Based on information from the Coast Guard, fee collections, under current law, are expected to be about $2.6 million annually for fiscal years 1985 through 1988, and expenditures are projected to be about $1 million per year.

Under H.R. 2353, fees would only be collected in the amount necessary to maintain the fund level at $4 million. The resulting annual revenues would be about $2 million less than under current law.

Enactment of this bill would not affect the budgets of state and local governments.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER, *Director.*

(4) With reference to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has not received a report from the Committee on Government Operations pertaining to this subject matter.

(5) With reference to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the following information is provided: The effect of carrying out H.R. 2353, as reported, should be minimized with respect to prices and costs.

COST OF LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires a statement of the estimated costs to the United States which would be incurred in carrying out H.R. 2353, as reported, in Fiscal Year 1984 and each of the following five years. However, under paragraph (d) of clause 7, its provisions do not

apply when the Committee has received a timely report from the Congressional Budget Office.

COMMITTEE ACTION AND VOTE

The Committee, in compliance with rule XI(2)(l)(2)(A) of the Rules of the House of Representatives, reports favorably the bill H.R. 2353. The Committee ordered the bill reported by a vote of 49 to 0.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

DEEPWATER PORT ACT OF 1974

* * * * * * *

DEFINITIONS

SEC. 3. As used in this Act, unless the context otherwise requires, the term—

(1) * * *

* * * * * * *

[(4) "application" means any application submitted under this Act (A) for a license for the ownership, construction, and operation of a deepwater port; (B) for transfer of any such license; or (C) for any substantial change in any of the conditions and provisions of any such license;]

(4) "application" means an application submitted under this Act for a license for the ownership, construction, and operation of a deepwater port;

* * * * * * *

LICENSE FOR THE OWNERSHIP, CONSTRUCTION, AND OPERATION OF A DEEPWATER PORT

SEC. 4. (a) * * *

[(b) The Secretary is authorized, upon application and in accordance with the provisions of this Act, to issue, transfer, amend, or renew a license for the ownership, construction, and operation of a deepwater port.]

(b) The Secretary may—

(1) on application, issue a license for the ownership, construction, and operation of a deepwater port; and

(2) on petition of the licensee, amend, transfer, or reinstate a license issued under this Act.

* * * * * * *

(e)(1) In issuing a license for the ownership, construction, and operation of a deepwater port, the Secretary shall prescribe any conditions which he deems necessary to carry out the provisions of

this Act, or which are otherwise required by any Federal department or agency pursuant to the terms of this Act. *On petition of a licensee, the Secretary shall review any condition of a license issued under this Act to determine if that condition is uniform, insofar as practicable, with the conditions of other licenses issued under this Act, reasonable, and necessary to meet the objectives of this Act. The Secretary shall amend or rescind any condition that is no longer necessary or otherwise required by any Federal department or agency under this Act.*

* * * * * * *

[(f) Upon application, licenses issued under this Act may be transferred if the Secretary determines that such transfer is in the public interest and that the transferee meets the requirements of this Act and the prerequisites to issuance under subsection (c) of this section.]

(f) The Secretary may amend, transfer, or reinstate a license issued under this Act if the amendment, transfer, or reinstatement is consistent with the findings made at the time the license was issued.

* * * * * * *

[(h) Licenses issued under this Act shall be for a term of not to exceed 20 years. Each licensee shall have a preferential right to renew his license subject to the requirements of subsection (c) of this section, upon such conditions and for such term, not to exceed an additional 10 years upon each renewal, as the Secretary determines to be reasonable and appropriate.]

(h) A license issued under this Act remains in effect unless suspended or revoked by the Secretary or until surrendered by the licensee.

PROCEDURE

SEC. 5. (a) * * *

* * * * * * *

(g) A license may be issued[, transferred, or renewed] only after public notice and public hearings in accordance with this subsection. At least one such public hearing shall be held in each adjacent coastal State. Any interested person may present relevant material at any hearing. After hearings in each adjacent coastal State are concluded, if the Secretary determines that there exists one or more specific and material factual issues which may be resolved by a formal evidentiary hearing, at least one adjudicatory hearing shall be held in accordance with the provisions of section 554 of title 5, United States Code, in the District of Columbia. The record developed in any such adjudicatory hearing shall be basis for the Secretary's decision to approve or deny a license. Hearings held pursuant to this subsection shall be consolidated insofar as practicable with hearings held by other agencies. All public hearings on all applications for any designated application area shall be consolidated and shall be concluded not later than 240 days after

notice of the initial application has been published pursuant to section 5(c) of this Act.

* * * * * * *

ANTITRUST REVIEW

SEC. 7. (a) The Secretary shall not issue[, transfer, or renew] any license pursuant to section 4 of this Act unless he has received the opinions of the Attorney General of the United States and the Federal Trade Commission as to whether such action would adversely affect competition, restrain trade, promote monopolization, or otherwise create a situation in contravention of the antitrust laws. The issuance of a license under this Act shall not be admissible in any way as a defense to any civil or criminal action for violation of the antitrust laws of the United States, nor shall it in any way modify or abridge any private right of action under such laws.

(b) (1) [Whenever any application for issuance, transfer, substantial change in, or renewal of any license is received, the Secretary shall transmit promptly to the Attorney General and the Federal Trade Commission a complete copy of such application.] *The Secretary shall transmit promptly to the Attorney General and the Federal Trade Commission a complete copy of each application for issuance of a license or a petition for the amendment, transfer, or reinstatement of a license that is received.* Within 45 days following the last public hearing *on license application,* the Attorney General and the Federal Trade Commission shall each prepare and submit to the Secretary a report assessing the competitive effects which may result from issuance of the proposed license and the opinions described in subsection (a) of this section. If either the Attorney General or the Federal Trade Commission, or both, fails to file such views within such period, the Secretary shall proceed as if he had received such views.

* * * * * * *

COMMON CARRIER STATUS

[SEC. 8. (a) For the purpose of chapter 39 of title 18, United States Code (18 U.S.C. 831-837), and part I of the Interstate Commerce Act (49 U.S.C. 1-27), a deepwater port and storage facilities serviced directly by such deepwater port shall be subjected to regulation as a common carrier in accordance with the Interstate Commerce Act, as amended.

[(b) A licensee under this Act shall accept, transport, or convey without discrimination all oil delivered to the deepwater port with respect to which its license is issued. Whenever the Secretary has reason to believe that a licensee is not operating a deepwater port, any storage facility or component thereof, in compliance with its obligations as a common carrier, the Secretary shall commence an appropriate proceeding before the Interstate Commerce Commission or he shall request the Attorney General to take appropriate steps to enforce such obligation and, where appropriate, to secure the imposition of appropriate sanctions. The Secretary may, in addition, proceed as provided in section 12 of this Act to suspend or terminate the license of any person so involved.]

SEC. 8. (a) A deepwater port and a storage facility serviced directly by that deepwater port shall operate as a common carrier under applicable provisions of part I of the Interstate Commerce Act and subtitle IV of tile 49, United States Code, except as provided by subsection (b) of this section.

(b) A licensee under this Act shall accept, transport, or convey without discrimination all oil delivered to the deepwater port with respect to which its license is issued. However, a licensee is not subject to common carrier regulations under subsection (a) of this section when that licensee—

(1) is subject to effective competition for the transportation of oil from alternative transportation systems; and

(2) sets its rates, fees, charges, and conditions of service on the basis of competition, giving consideration to other relevant business factors such as the market value of services provided, licensee's cost of operation, and the licensee's investment in the deepwater port and a storage facility, and components thereof, serviced directly by that deepwater port.

(c) When the Secretary has reason to believe that a licensee is not in compliance with this section, the Secretary shall commence an appropriate proceeding before the Federal Energy Regulatory Commission or request the Attorney General to take appropriate steps to enforce compliance with this section and, when appropriate, to secure the imposition of appropriate sanctions. In addition, the Secretary may suspend or revoke the license of a licensee not complying with its obligations under this section.

* * * * * * *

LIABILITY

SEC. 18. (a)(1) * * *

* * * * * * *

(d) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the owner and operator of a vessel shall be jointly and severally liable, without regard to fault, for cleanup costs and for damages that result from a discharge of oil from such vessel within any safety zone, or from a vessel which has received oil from another vessel at a deepwater port *while located in the safety zone,* except when such vessel is moored at a deepwater port. Such liability shall not exceed $150 per gross ton or $20,000,000, whichever is lesser, except that if it can be shown that such discharge was the result of gross negligence or willful misconduct within the privity and knowledge of the owner or operator, such owner and operator shall be jointly and severally liable for the full amount of all cleanup costs and damages.

* * * * * * *

(f)(1) * * *

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(3) Each licensee shall collect from the owner of any oil loaded or unloaded at the deepwater port operated by such licensee, at the time of loading or unloading, a fee of 2 cents per barrel, except that (A) bunker or fuel oil for the use of any vessel, and (B) oil

which was transported through the trans-Alaska pipeline, shall not be subject to such collection. Such collections shall be delivered to the Fund at such times and in such manner as shall be prescribed by the Secretary. [Such collections shall cease after the amount of money in the Fund has reached $100,000,000, unless there are adjudicated claims against the Fund yet to be satisfied. Collection shall be resumed when the Fund is reduced below $100,000,000.] *These collections shall cease after the date of enactment of the Deepwater Port Act Amendments of 1984, unless there are adjudicated claims against the Fund to be satisfied. The Secretary may order the collection of the fee to be resumed when the unobligated balance of the Fund as reduced by the unliquidated debts to the United States Treasury is less than $4,000,000. Any collection of fees ordered by the Secretary under the preceding sentence shall cease whenever the unobligated balance of the Fund as reduced by the unliquidated debts to the United States Treasury exceeds $4,000,000. The Fund may borrow from the United States Treasury at an interest rate to be determined by the Secretary of the Treasury amounts sufficient to maintain the available balance in the Fund at $4,000,000, but only to such extent and in such amounts as are provided in advance in appropriation Acts. Such amounts shall remain available until expended.* Whenever the money in the Fund is less than *the amount the Secretary determines is needed to draw upon under subsection (c)(3) of this section or* the claims for cleanup costs and damages for which it is liable under this section. The Fund shall borrow the balance required to pay such claims from the United States Treasury at an interest rate determined by the Secretary of the Treasury. Costs of administration shall be paid from the Fund only after appropriation in an appropriation bill. All sums not needed *to draw upon under subsection (c)(3) of this section or* for administration and the satisfaction of claims shall be prudently invested in income-producing securities issued by the United States and approved by the Secretary of the Treasury. Income from such securities shall be applied to the principal of the Fund.

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(h)(1) * * *

(2) In any case where liability is imposed pursuant to subsection (e) of this section, if the discharge was the result of the unseaworthiness of a vessel or the negligence of the owner or operator of such vessel, the licensee shall be subrogated to the rights of any person entitled to recovery against such owner or operator. *In that event, the owner and operator of the vessel are jointly and severally liable for cleanup costs and damages resulting from that discharge in the same manner and to the same extent as under subsection (d) of this section.*

(3) Payment of compensation for any damages pursuant to subsection (f)(2) of this section shall be subject to the Fund acquiring by subrogation all rights of the claimant to recover for such damages from any other person. *When the Fund under this subsection is subrogated to the right of any person entitled to recovery against the owner or operator of a vessel, that owner and operator are jointly and severally liable for cleanup costs and damages resulting from*

the discharge in the same manner and to the same extent as under subsection (d) of this section.

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RELATIONSHIP TO OTHER LAWS

SEC. 19. (a) (1) The Constitution, laws, and treaties of the United States shall apply to a deepwater port licensed under this Act and to activities connected, associated, or potentially interfering with the use or operation of any such port, in the same manner as if such port were an area of exclusive Federal jurisdiction located within a State. Nothing in this Act shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by Federal law, regulation, or treaty. Deepwater ports licensed under this Act do not possess the status of islands and have no territorial seas of their own.

(2) Except as otherwise provided by this Act, nothing in this Act shall in any way alter the responsibilites and authorities of a State or the United States within the territorial seas of the United States.

(3) The Secretary of State shall notify the government of each foreign state having vessels registered under its authority or flying its flag which may call at or otherwise utilize a deepwater port but which do not currently have an agreement in effect as provided in subsection (c)(2)(A)(i) of this section that the United States intends to exercise jurisdiction over vessels calling at or otherwise utilizing a deepwater port and the persons on board such vessels. The Secretary of State shall notify the government of each such state that, absent its objection, its vessels will be subject to the jurisdiction of the United States whenever they—

(A) are calling at or otherwise utilizing a deepwater part; and

(B) are within the safety zone of such a deepwater port and are engaged in activities connected, associated, or potentially interfering with the use and operation of the deepwater port.

The Secretary of State shall promptly inform licensees of deepwater ports of all objections received from governments of foreign states in response to notifications made under this paragraph.

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[(c) Except in a situation involving force majeure, a licensee of a deepwater port shall not permit a vessel, registered in or flying the flag of a foreign state, to call at, or otherwise utilize a deepwater port licensed under this Act unless (1) the foreign state involved, by specific agreement with the United States, has agreed to recognize the jurisdiction of the United States over the vessel and its personnel, in accordance with the provisions of this Act, while the vessel is located within the safety zone, and (2) the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel while located within such a safety zone.]

(c)(1) The jurisdiction of the United States shall apply to vessels of the United States and persons on board such vessels. The jurisdiction of the United States shall also apply to vessels, and persons

on board such vessels, registered in or flying the flag of foreign states, whenever such vessels are—

(A) calling at or otherwise utilizing a deepwater port; and

(B) are within the safety zone of such a deepwater port, and are engaged in activities connected, associated, or potentially interfering with the use and operation of the deepwater port.

The jusridiction of the United States under this paragraph shall not, however, apply to vessels registered in or flying the flag of any foreign state that has objected to the application of such jurisdiction.

(2) Except in a situation involving force majeure, a licensee shall not permit a vessel registered in or flying the flag of a foreign state to call at or otherwise utilize a deepwater port licensed under this Act unless—

(A)(i) the foreign state involved, by specific agreement with the United States, has agreed to recognize the jurisdiction of the United States over the vessels registered in or flying the flag of that state and persons on board such vessels in accordance with the provisions of paragraph (1) of this subsection, while the vessel is located within the safe zone, or

(ii) the foreign state has not objected to the application of the jurisdiction of the United States to any vessel, or persons on board such vessel, while the vessel is located within the safety zone; and

(B) the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel while located within such a safety zone.

(3) For purposes of paragraph (2)(A)(ii) of this subsection, a licensee shall not be obliged to prohibit a call at or use of a deepwater port by a vessel registered in or flying the flag of an objecting state unless the licensee has been informed by the Secretary of State as required by subsection (a)(3) of this section.

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